

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS SARLO	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
CHARLES WEBSTER AND	:	
PROCESS APPLICATIONS, LTD.	:	NO. 02-CV-6708

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 24, 2003

In this action on a contract, plaintiff Louis Sarlo, a sales representative in the paper manufacturing industry, alleges that he entered into an agreement with defendant Charles Webster, president of Process Applications, Ltd. ("PAL"), that Sarlo would receive a 10% commission on any sales he made on behalf of PAL as an independent contractor with the title of Vice President of Sales. After ten years of selling for PAL, Sarlo was terminated on January 3, 2000. Sarlo claims that Webster and PAL had no unilateral right to terminate his position or the commission arrangement and that once he brought in a customer he was to get 10% of the sales revenue from that customer for so long as the customer continued to purchase certain products from PAL.

PAL now refuses to pay Sarlo 10% of the post-termination sales revenue from those customers he brought to the company.

Sarlo seeks \$235,125.82 (10% of \$2,351,258.23, the sales of PAL from January 1, 2000 through October 23, 2002), plus 10% commission on any PAL sales to customers Sarlo brought to PAL for a reasonable period after the conclusion of trial, plus punitive damages.<sup>1</sup>

Defendants claim the agreement did not provide that plaintiff would continue to receive 10% commissions after his employment was terminated.

Defendants have moved for summary judgment because plaintiff has failed to produce sufficient evidence for a reasonable jury to find a breach of contract. Upon review of the record, this court grants summary judgment to the defendants on the remaining counts of the Complaint.<sup>2</sup>

#### **Summary Judgment Standard**

A court should grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

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<sup>1</sup> Plaintiff's original complaint alleged that the contract provided for Sarlo's permanent, lifetime employment. This allegation was omitted from the amended complaint.

<sup>2</sup> Plaintiff originally included Counts for breach of joint venture (Count III) and breach of fiduciary duty (Count IV), but these counts were withdrawn at the final pretrial conference held on June 25, 2003.

A fact is "material" if proof of its existence or non-existence might affect the outcome of the suit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Rule 56(e) requires the entry of summary judgment, after adequate time for discovery, when a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The entire record must be examined in the light most favorable to the nonmoving party. Continental Ins. Co. v. Bodie, 682 F.2d 436, 438 (3d Cir. 1982).

### **Discussion**

It is undisputed that the parties had an oral agreement providing that Sarlo would receive 10% commission on any and all sales he made during his work for PAL as an independent contractor. Sarlo also claims that the oral agreement provided that he would continue to collect a 10% commission on sales made after his work for PAL ceased. Sarlo has submitted no evidence of this.

Where the alleged agreement is not evidenced by a writing, plaintiff bears the burden of establishing the existence and terms of an oral contract by clear and precise evidence. See Bergquist Co. v. Sunroe Co., 777 F.Supp. 1236, 1250 (E.D. Pa. 1991). For a contract to be enforceable, the "nature and extent

of its obligation must be certain; the parties themselves must agree upon the material and necessary details of the bargain." Morris v. Ace Medical Co., 1996 WL 69400 (E.D. Pa.) (citing Lombardo v. Gasparini Excavating Co., 123 A.2d 663, 666 (Pa. 1956)). No contract exists unless there is a meeting of the parties' minds on the essential terms of the agreement, and the court may only provide reasonable terms for missing or vague nonessential terms where the intention of the parties may be clearly discerned. Id.

Sarlo claims that at his deposition, Webster testified the parties never agreed that commission payments to plaintiff would terminate as of a specific date. (Dep. Webster, p. 58:8-10). This misstates what Webster said at the deposition. Webster was asked when the 10% commissions to which Sarlo was entitled would be paid, not the period for which Sarlo would be entitled to payment of commissions. Even if Sarlo's paraphrase of Webster's statement were accurate, Webster did not agree that the commission payments would continue after the contract was terminated.

Plaintiff also points to his own deposition testimony, in which he stated that only he could terminate the agreement (Dep. Sarlo, pp. 63:5-11; 64:20-65:02). There is no evidence Webster or any other PAL representative ever agreed to this. Without a meeting of the minds, there can be no contract. There is no

evidence of a mutual agreement or intention to agree to continue the 10% commissions after Sarlo ceased his work for PAL.

Sarlo argues that contracts which do not fix a definite time for the duration of the relationship are sometimes construed as continuing for a "reasonable time." King of Prussia Equipment Corp. v. Power Curbers, Inc., 158 F. Supp. 2d 463, 466 (E.D. Pa. 2001). Since the oral agreement between the parties did not provide for a specific time that his commissions would be paid, Sarlo contends the court should consider the surrounding circumstances and intent of the parties and assign a reasonable time. Sarlo offered no argument for what would be a "reasonable" time in these circumstances and there is no evidence from which a jury could find that a reasonable time was other than the duration of his relationship with PAL.

Sarlo cannot produce any evidence of an agreement providing that the commission arrangement would last beyond his tenure with PAL. Without such evidence, a reasonable jury could not find that defendants breached the contract alleged and could not award damages. Therefore, defendants' Motion for Summary Judgment is granted. An appropriate order follows.

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ORDER

AND NOW, this \_\_\_\_ day of July, 2003, upon consideration of Defendants' Motion for Summary Judgment (paper no. 20) and plaintiff's response thereto, for the reasons set forth in the accompanying memorandum, it is **ORDERED** that:

1. Defendants' Motion for Summary Judgment is **GRANTED**.
2. Judgment is entered in favor of defendant Charles Webster and Process Applications, Ltd., and against plaintiff Louis Sarlo.
3. The clerk is directed to mark this case closed.

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Norma L. Shapiro, S.J.